



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,394	08/01/2003	Michael V. Pavlov	COBR-10042	2919

7590 07/07/2004
Albert L. Schmeiser
Schmeiser, Olsen & Watts LLP
18 East University Drive, #101
Mesa, AZ 85201

EXAMINER

GARCIA, ERNESTO

ART UNIT	PAPER NUMBER
----------	--------------

3679

DATE MAILED: 07/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/632,394	PAVLOV, MICHAEL V.	
	Examiner	Art Unit	
	Ernesto Garcia	3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-5,9,12,16 and 31-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4 and 38-40 is/are allowed.
- 6) ☒ Claim(s) 3,5,9,12,16,31,32 and 34-37 is/are rejected.
- 7) ☒ Claim(s) 33 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The indicated allowability of claims 4 and 38-40 is withdrawn in view of Fibun, GB-2,337,279. The examiner did not consider duplication of parts during examination. Rejections based on Fibun follow.

Terminal Disclaimer

The terminal disclaimer filed on 5/3/04 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of the U.S. patent, 6,601,830 has been reviewed and is NOT accepted.

The person who signed the terminal disclaimer is not recognized as an officer of the assignee, and he/she has not been established as being authorized to act on behalf of the assignee. See MPEP § 324.

An attorney or agent, not of record, is not authorized to sign a terminal disclaimer in the capacity as an attorney or agent acting in a representative capacity as provided by 37 CFR 1.34 (a). See 37 CFR 1.321(b) and/or (c).

Drawings

Based on the remarks that claim 33 is a result of the width of the edge regions being smaller than the third edge portions, the drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the first edge portions are not longitudinally aligned with adjacent

Art Unit: 3679

third edge portions (claim 33) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

Claims 3-5, 9-12, 16, 31, 38 and 40 are objected to because of the following informalities:

regarding claims 3-5, 9-12, 16 and 31, a claim in dependent form shall contain a reference to a claim previously set forth;

regarding claim 31, --edge-- needs to be inserted after "first" in line 7;

regarding claim 38, it is unclear whether "a barb root" in line 6 is also attached to the elongate flange; is "a barb root" in line 6 different than the "barb roots" in line 5?; and, "adjacent" in line 9 should be deleted as no adjacent barb root was previously recited; and,

regarding claim 40, "each pair of barbs" contradicts "a pair of tapered barbs"

Applicant is reminded that there is only one pair of tapered barbs recited in line 6 of claim 38. This pair is in a barb root and not in each of the barb roots recited in line 5. Appropriate correction is required.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 36, 3, 5, 37, 9, 12, and 16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,601,830 in view of Cochrane, British patent GB-2,337,279.

Regarding claim 36, in claims 1 and 10 of U.S. patent 6,601,830, they each lack the limitation "said channel does not receive a reinforcing wire". Cochrane teaches, on page 3 in lines 26-27, a barrier structure without a reinforcing wire thus the channel does not receive a reinforcing wire. Cochrane states that the invention is intended to cover the barrier structure without receiving a reinforcing wire in the channel such that the barrier structure is optional. Therefore, as taught by Cochrane, it would have been

Art Unit: 3679

obvious to one of ordinary skill in the art at the time the invention was made to not receive a reinforcing wire in the channel as an option to the barrier structure.

Regarding claim 3, this claim is obvious over claims 1 and 5, as claim 5 teaches arcuate cutouts in the second region.

Regarding claim 5, Cochrane teaches the metal tape having a plurality of first regions, second regions, and third regions and a distance between the barb points of the barbs is equal to a distance between adjacent ones of the second regions of the tape.

Regarding claim 37, applicant has admitted in the remarks, filed on 5/3/04 on page 12 in the second paragraph, that claim 37 is identical to claim 1 of the patent, 6,601,830 except without the limitation in the last line. Cochrane discloses, in Figure 3, the channel describing an arc extending between the flanges, which the arc extends less or equal to approximately 180 degrees.

Regarding claim 9, Cochrane also teaches a width of each of the flanges in each first region is greater than a width of each of the flanges in each second region. A width of each of the flanges in each third region is greater than a width of each of the flanges in each second region.

Art Unit: 3679

Regarding claim 12, Cochrane also teaches a width of each of the flanges in each second region is equal to a width of each of the flanges in each third region.

Regarding claim 16, Cochrane teaches the continuous piece of elongated metal tape having first regions, second regions, and third regions; and a distance between the barb points of the pair of barbs is approximately the same as the distance between adjacent ones of the second regions of the tape.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 31, 32, 34 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Fibun, British patent GB-2,039,683 (see marked-up attachment).

Regarding claim 31, Fibun discloses in Figures 2 and 3, a barrier structure comprising a metal tape **12a** comprising an elongate body **13**, a pair of elongate flanges **A30**, and barbs **14**. The body **13** defines a longitudinally extending channel **17**. The flanges **A30** extend transversely from each side **A40** of the channel **17**. The barbs **14** are spaced along the metal tape **12a** and connected to the metal tape **12a** by respective

Art Unit: 3679

barb roots **A60**. The flanges **A30** have respective edges **A7** with first edge portions **A80**, second edge portions **A90**, and third edge portions **A100**. The first edge portions **A80** are adjacent to the barbs **14**. The second edge portions **A90** are adjacent to the first edge portions **A80**, and the third edge portions **A100** are adjacent to the second edge portions **A90**. The second edge portions **A90** are recessed inwardly toward the channel **17** relative to the first edge portions **A80** and the third edge portions **A100**. The second edge portions **A90** are not continuous with the first edge portions **A80** or the third edge portions **A100**.

Regarding claim 32, the first edge portions **A80** are longitudinally aligned with adjacent third edge portions **A110**.

Regarding claim 34, the channel **17** does not receive a reinforcing wire (page 2, lines 34-37; a fibre-optic filament is not a reinforcing wire).

Regarding claim 35, the channel **17** forms an arc extending between the flanges **A30**. The arc has an angle of approximately 180 degrees.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3679

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 38-40 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fibun, British patent GB-2,039,683 (see attachment of modified Fig. 2).

Regarding claim 38, Fibun discloses, in Figure 2, a barrier structure comprising a piece of elongated metal tape **12a** comprising an elongate body, barb roots **A60**, a first region **A800**, a second region **A900**, and a third region **A1000**. The body defines a longitudinally extending channel **17** and an elongate flange **A30** extending transversely from each side of the channel **17**. The roots **A60** are spaced along the tape **12a** and secured to each flange **A30**. A pair of tapered barbs **14** are secured to a barb root **A1**. The first region **A800** is adjacent to the barb root **A1**. The second region **A900** is adjacent to the first region **A800** distal from the barb root **A1**. The third region **A1000** is adjacent to the second region **A900** distal from the first region **A800**. The third region **A1000** extends lengthwise from the second region **A900**. The second region **A900** comprises an arcuate cutout **19**. The channel **17** does not receive a reinforcing wire (page 2, lines 34-37; a fibre-optic filament is not a reinforcing wire) and the channel **17** describes an arc extending between each flange **A30**. The arc extends about 180 degrees. However, the third region **A1000** does not meet a corresponding third region extending lengthwise away from another second region.

Art Unit: 3679

Applicant is reminded that due to a duplication of the arcuate cutout **19** in a region that includes the first region **A800**, the second region **A900**, and the third region **A1000**, will result a modification as shown in the attachment provided herein, to further weaken the tape (page 2, lines 19-24). Thus, the tape will have more regions and especially corresponding regions as shown in the attachment. As a result, the third region **A1000** meets a corresponding third region **1100** extending lengthwise away from another second region **A1200**. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a second cutout to further weaken the tape. As a result, the third region meets a corresponding third region. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Regarding claim 39, each flange **A30** extends along the first region **A800**, the second region **A900**, and the third region **A1000**.

Regarding claim 40, the pair of tapered barbs **14** is a part of a cluster of four barbs. Each cluster of four barbs comprising a pair of barbs extending from each flange **A30**.

Regarding claim 4, each of the barb roots **A60** is connected to a pair of barbs. The pair of barbs point in opposite direction along a longitudinal axis of the tape **12a**.

Response to Amendment

Applicant's arguments with respect to claims 3, 5, 9, 12, 16, 31, 32 and 34-37, have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

Claim 33 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

regarding claim 33, based on the remarks that the subject matter of claim 33 is a result of the width of the flanges in the first region being greater than the width of the second region as explained in the remarks, the prior art of record does not disclose or suggest first edge portions being not longitudinally aligned with adjacent third edge portions; Fibun teaches the first edge portions being longitudinally aligned with the third edge portions as the width of the first edge portions is equal to the width of the second edge portions.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernesto Garcia whose telephone number is 703-308-8606. The examiner can normally be reached from 9:30-6:00. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 703-308-2686. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

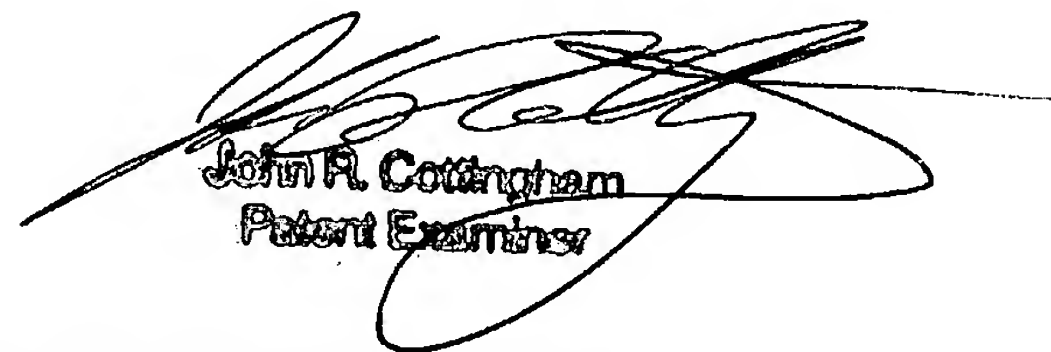
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

E.G.

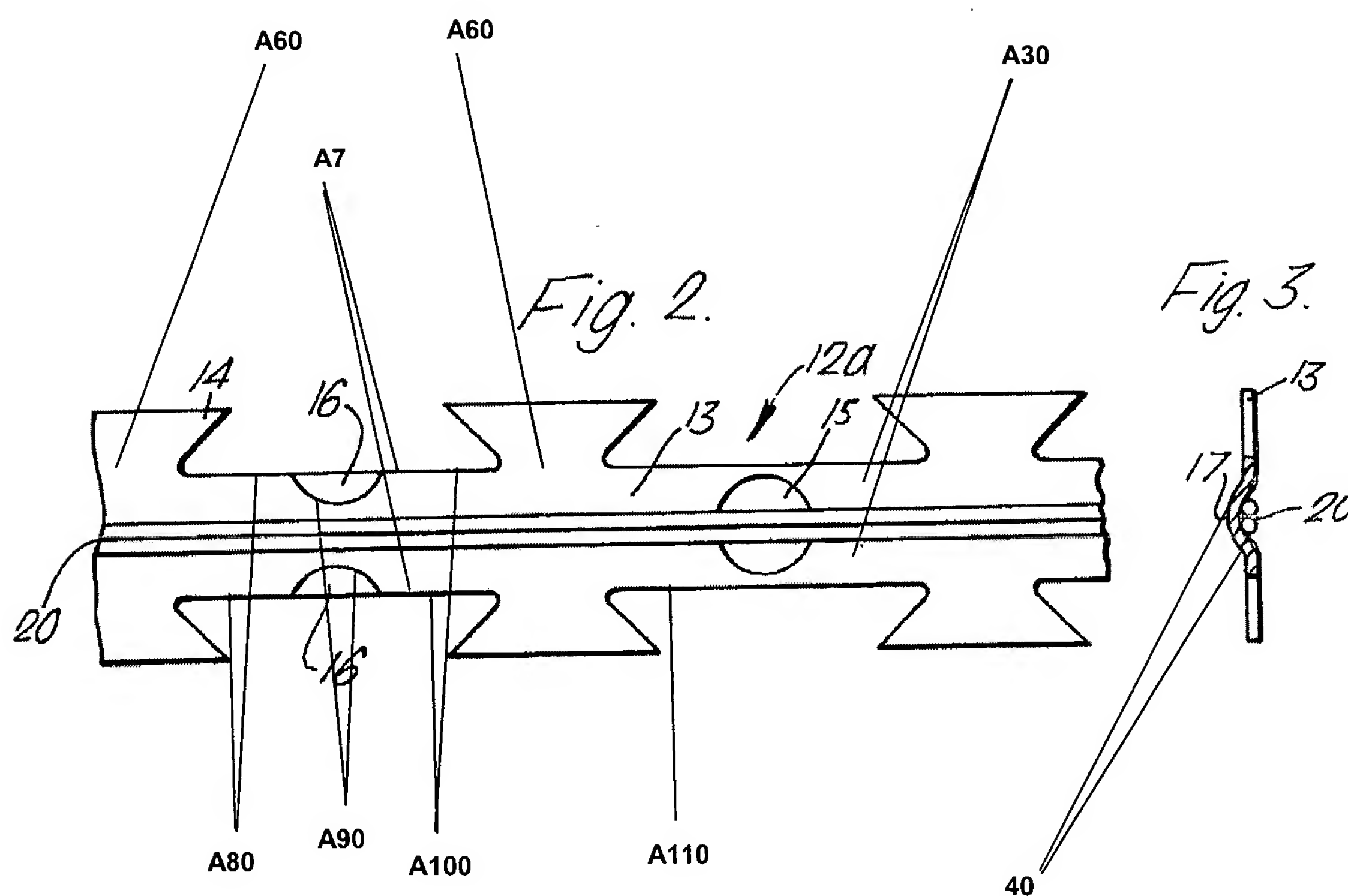
E.G.

June 25, 2004

Attachments: one marked-up copy of British patent, GB-2,039,683 to Fibun; and,
one marked-up copy of an obvious modification to Fibun, GB-2,039,683.


John R. Cottingham
Patent Examiner

GB-2,039,683



Art Unit: 3679

GB-2,039,683 (Fibun's obvious modification)

